



## 2013 ASSEMBLY BILL 180

1     **AN ACT** *to amend* 23.33 (4p) (b) 4., 30.684 (2) (d), 343.305 (5) (b), 346.65 (2) (am)  
2             6., 346.65 (2) (am) 7., 346.65 (3m), 346.65 (3r) and 350.104 (2) (d); and *to create*  
3             346.63 (2) (c), 346.63 (6) (d) and 346.65 (3t) of the statutes; **relating to:**  
4             elements of, and penalties and testing for, certain operating-while-intoxicated  
5             offenses and providing a penalty.

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*Analysis by the Legislative Reference Bureau*

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

6             **SECTION 1.** 23.33 (4p) (b) 4. of the statutes is amended to read:  
7             23.33 (4p) (b) 4. 'Validity; procedure.' A chemical test of blood or urine  
8             conducted for the purpose of authorized analysis is valid as provided under s. 343.305  
9             (6). The duties and responsibilities of the laboratory of hygiene, department of  
10            health services and department of transportation under s. 343.305 (6) apply to a

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1 chemical test of blood or urine conducted for the purpose of authorized analysis  
2 under this subsection. Blood may be withdrawn from a person arrested for a  
3 violation of the intoxicated operation of an all-terrain vehicle or utility terrain  
4 vehicle law only by a physician, registered nurse, medical technologist, physician  
5 assistant, phlebotomist, or other medical professional who is authorized to draw  
6 blood, or person acting under the direction of a physician and the person who  
7 withdraws the blood, the employer of that person and any hospital where blood is  
8 withdrawn have immunity from civil or criminal liability as provided under s. 895.53

9 **SECTION 2.** 30.684 (2) (d) of the statutes is amended to read:

10 30.684 (2) (d) *Validity; procedure.* A chemical test of blood or urine conducted  
11 for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The  
12 duties and responsibilities of the laboratory of hygiene, department of health  
13 services and department of transportation under s. 343.305 (6) apply to a chemical  
14 test of blood or urine conducted for the purpose of authorized analysis under this  
15 section. Blood may be withdrawn from a person arrested for a violation of the  
16 intoxicated boating law only by a physician, registered nurse, medical technologist,  
17 physician assistant, phlebotomist, or other medical professional who is authorized  
18 to draw blood, or person acting under the direction of a physician and the person who  
19 withdraws the blood, the employer of that person and any hospital where blood is  
20 withdrawn have immunity from civil or criminal liability as provided under s.  
21 895.53.

22 **SECTION 3.** 343.305 (5) (b) of the statutes is amended to read:

23 343.305 (5) (b) Blood may be withdrawn from the person arrested for violation  
24 of s. 346.63 (1), (2), (2m), (5), or (6) or 940.25, or s. 940.09 where the offense involved  
25 the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2m), or (5),

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1 or as provided in sub. (3) (am) or (b) to determine the presence or quantity of alcohol,  
2 a controlled substance, a controlled substance analog, or any other drug, or any  
3 combination of alcohol, controlled substance, controlled substance analog, and any  
4 other drug in the blood only by a physician, registered nurse, medical technologist,  
5 physician assistant, phlebotomist, or other medical professional who is authorized  
6 to draw blood, or person acting under the direction of a physician.

7 **SECTION 3g.** 346.63 (2) (c) of the statutes is created to read:

8 346.63 (2) (c) In this subsection, “injury” has the meaning given for “substantial  
9 bodily harm” in s. 939.22 (38).

10 **SECTION 3r.** 346.63 (6) (d) of the statutes is created to read:

11 346.63 (6) (d) In this subsection, “injury” has the meaning given for  
12 “substantial bodily harm” in s. 939.22 (38).

13 **SECTION 4.** 346.65 (2) (am) 6. of the statutes is amended to read:

14 346.65 (2) (am) 6. Except as provided in par. (f), is guilty of a Class G felony if  
15 the number of convictions under ss. 940.09 (1) and 940.25 in the person’s lifetime,  
16 plus the total number of suspensions, revocations, and other convictions counted  
17 under s. 343.307 (1), equals 7, 8, or 9, except that suspensions, revocations, or  
18 convictions arising out of the same incident or occurrence shall be counted as one.  
19 The court shall impose a bifurcated sentence under s. 973.01 and the confinement  
20 portion of a ~~the~~ bifurcated sentence imposed on the person under s. 973.01 shall be  
21 not less than 3 years.

22 **SECTION 5.** 346.65 (2) (am) 7. of the statutes is amended to read:

23 346.65 (2) (am) 7. Except as provided in par. (f), is guilty of a Class F felony if  
24 the number of convictions under ss. 940.09 (1) and 940.25 in the person’s lifetime,  
25 plus the total number of suspensions, revocations, and other convictions counted

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1 under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or  
2 convictions arising out of the same incident or occurrence shall be counted as one.  
3 The court shall impose a bifurcated sentence under s. 973.01 and the confinement  
4 portion of a the bifurcated sentence imposed on the person under s. 973.01 shall be  
5 not less than 4 years.

6 **SECTION 6.** 346.65 (3m) of the statutes is amended to read:

7 346.65 (3m) Except as provided in sub. (3p) ~~or~~ (3r), or (3t), any person violating  
8 s. 346.63 (2) or (6) shall be fined not less than \$300 nor more than \$2,000 and ~~may~~  
9 shall be imprisoned for not less than 30 days nor more than one year in the county  
10 jail. If there was a minor passenger under 16 years of age in the motor vehicle at the  
11 time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the  
12 offense is a felony, the applicable minimum and maximum fines or periods of  
13 imprisonment for the conviction are doubled and the place of imprisonment shall be  
14 determined under s. 973.02.

15 **SECTION 6g.** 346.65 (3r) of the statutes is amended to read:

16 346.65 (3r) ~~In~~ Subject to sub. (3t), in any county that opts to offer a reduced  
17 minimum period of imprisonment for the successful completion of a probation period  
18 that includes alcohol and other drug treatment, any person violating s. 346.63 (2) or  
19 (6) shall be fined the same as under sub. (3m), but the period of imprisonment shall  
20 be not less than 30 days, except that if the person successfully completes a period of  
21 probation that includes alcohol and other drug treatment, the period of  
22 imprisonment shall be not less than 15 days. If there was a minor passenger under  
23 16 years of age in the motor vehicle at the time of the violation that gave rise to the  
24 conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum  
25 and maximum fines or periods of imprisonment for the conviction are doubled and

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1 the place of imprisonment shall be determined under s. 973.02. A person may be  
2 sentenced under this subsection or under sub. (2) (bm) or (cm) or (2j) (bm) or (cm) once  
3 in his or her lifetime. This subsection does not apply to a person sentenced under sub.  
4 (3p).

5 **SECTION 6r.** 346.65 (3t) of the statutes is created to read:

6 346.65 (3t) If the person injured was an adult who was in the vehicle operated  
7 by the person violating s. 346.63 (2) or (6), the court may impose a sentence that is  
8 less than the minimum sentence required under sub. (3m) if the court finds that the  
9 best interest of the community will be served and the public will not be harmed by  
10 the sentence, and the court places the reasons for imposing a sentence that is less  
11 than the minimum sentence required under sub. (3m) on the record.

12 **SECTION 7.** 350.104 (2) (d) of the statutes is amended to read:

13 350.104 (2) (d) *Validity; procedure.* A chemical test of blood or urine conducted  
14 for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The  
15 duties and responsibilities of the laboratory of hygiene, department of health  
16 services and department of transportation under s. 343.305 (6) apply to a chemical  
17 test of blood or urine conducted for the purpose of authorized analysis under this  
18 section. Blood may be withdrawn from a person arrested for a violation of the  
19 intoxicated snowmobiling law only by a physician, registered nurse, medical  
20 technologist, physician assistant, phlebotomist, or other medical professional who is  
21 authorized to draw blood, or person acting under the direction of a physician and the  
22 person who withdraws the blood, the employer of that person and any hospital where  
23 blood is withdrawn have immunity from civil or criminal liability as provided under  
24 s. 895.53

25 **SECTION 8. Initial applicability.**

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1           (1) The treatment of sections 346.63 (2) (c) and (6) (d) and 346.65 (2) (am) 6. and  
2           7., (3m), (3r), and (3t) of the statutes first applies to violations committed or refusals  
3           occurring on the effective date of this subsection, but does not preclude the counting  
4           of other convictions, suspensions, or revocations as prior convictions, suspensions,  
5           or revocations for purposes of administrative action by the department of  
6           transportation, sentencing by a court, or revocation or suspension of motor vehicle  
7           operating privileges.

8

(END)